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The CASE of Preſent

DISTRESSES ON Non-Conformiſts, EXAMINED:

In the Execution of an Act, Entituled, *An Act againſt Seditious Conventicles* (whereof large Experience hath manifeſted, that no Diſſenters are guilty): this Practice hath been of late taken up, that upon the Oath of ſome Informers, Convictions are clancularly made, and Executions granted on the Goods of thoſe informed againſt, a firſt, ſecond, third time, *&c.* without Notice, Warning or Summons, or any intimation of Procedure againſt them, or allowance for them to make their own Defence.

1. THis Practice is as contrary to the original Pattern of all Government, as unto the execution of Law in criminal Caſes. When *Adam* ſinned by the tranſgreſſion of a Penal Law, God was the only Governour of the World, and there was a temporal Penalty annex'd unto that Tranſgreſſion. But yet to manifeſt, that perſonal Conviction was to be the natural Right of every Tranſgreſſor, before the execution of Puniſhment, he himſelf the only Judge, tho abſolutely Omniſcient, deals with *Adam* perſonally, as to the matter of Fact, *Haſt thou eaten of the tree, whereof I commanded thee that thou ſhouldſt not eat?* and gave him the liberty of his own defence, (as that which was his right) before he denounced any Sentence againſt him. He is ſtill the ſupreme Governour of the World; and let Magiſtrates take heed how they deſpiſe that Preſident and Pattern of the adminiſtration of Juſtice in criminal Cauſes, which he hath given and preſcribed unto all Mankind.

2. It is contrary to the light of Nature, and that in ſuch a Principle, as hath a great influence into the Conſtitution and Preſervation of Government in the World: and that is, *That every man is obliged unto, and*

is to be allowed the unblameable defence of himself and his own innocency, againſt evil and hurt from others. This the Law of God and Nature require of every man, and the whole figure of humane Juſtice doth allow; and that he may do this without Force or Violence, the Injury of others, or diſturbance of natural Order, is one of the principal benefits of Government in the World, and one chief end of its Inſtitution. If this be taken away, the Law of Nature is violated, the chief end of Government is deſtroyed, and all things are reduced to force and confuſion. This men are deprived of in this Practice, namely, of *lawful ſelf-defence* before Conviction, and the execution of Penalties. And it is to no purpoſe to pretend, that this is a matter of ſmall moment; ſo that altho there ſhould be a deviation in it from the common Rule, yet the Law of Nature in general may be kept inviolable: for that Law being the animating ſoul of all humane Government, as the whole in the whole, and the whole in every part, if it be wittingly contraveened in any inſtance, it tends to the diſſolution of the whole; and where any ſuch thing is admitted, it will ſully the Beauty, and weaken the rightful Power of any Government.

3. It hath been alwayes rejected in all Nations, even among the Heathen, who have exerciſed Government according unto the Rules of Reaſon and Equity. So the Laws and Uſage of the *Romans* is declared by *Feſtus*, Act. 25. *It is not the manner of the Romans to deliver any man to die, before that he which is accuſed have the Accuſers face to face, and have licence to anſwer for himſelf concerning the crime laid againſt him.* It is not of any weight to object, That this was in the caſe of *death*: for the reaſon of the Law is univerſal, namely, That every one who is charg'd with a *Crime*, in order unto Puniſhment, ſhould have liberty to anſwer for himſelf; and it was obſerved by them in all criminal Cauſes whatever. No inſtance can be given of their varying in this Proceſs, but it is noted as an Oppreſſion. And the ſame Practice is ſecured by the Laws and Uſages of all Civilized Nations: For,

4. This procedure of allowing men, charged with any Crime, real or pretended, liberty to anſwer for themſelves before Judgement and Execution, is ſo manifeſtly grounded on Natural Equity, ſo inſeparable from the common Preſumptions of Right and Wrong amongſt Mankind, as that it could never be wreſted from them on any pretence whatſoever. It is a contradiction unto common ſenſe in Morality and Polity, for a man to be convicted of a Crime expoſing him to Penalty, and not be allow'd to make his own defence before ſuch Conviction: yea, let men call ſuch a Sentence and its Execution, by what name they pleaſe, there is no Conviction in the caſe; and it is ridiculous to call it ſo, where a man is not allow'd to defend himſelf, or plead his own innocency, if he be ready ſo to do. The common ſaying of *qui ſtatuit aliquid parte inauditâ, altera æquum licet ſtatuerit haud æquus fuit*, is no leſs owned as unto its natural Equity, than that other, *Quod tibi fieri non vis, alteri non feceris*; and both of them ſufficiently condemn this Practice in the Conſciences of all men not blinded by prejudice or intereſt.

5. The

5. The general end of Penal Laws, which alone make them warrantable in Government, are inconſiſtent with ſuch clancular Convictions as are in this caſe pretended. Their firſt intention is Authority to inquire into Offences, whether they are real or no; for the preſervation of publick Good and Peace. And if it be found, that the Complaints concerning them are cauſeleſs, the ſecond intention which reſpects Puniſhment, is ſuperſeded; as God declared in the caſe of *Sodom*, unto the Inhabitants whereof after inquiry, he granted a perſonal Conviction by the Angel he ſent amongſt them, unto whom they openly declared their own Guilt. To omit the firſt intention of Law, and to go *per ſaltu* unto the latter, is to make that which was deſigned for the good of all men, to be unto the danger of all, and ruin of many. For,

6. The Practice deſign'd, takes away all Security of the Goods and Eſtates from many peaceable Subjects, even of all unto whom the Caſe extends; for every evil man is inabled hereby, for his own Profit and Advantage, to take the Goods of other men into his own Poſſeſſion, the Owner knowing nothing of the Cauſe of it, which Poſſeſſion ſhall be avowed legal. Now this is utterly contrary unto all good Government, and the principal end of the Law, which is to ſecure unto every man the poſſeſſion of his own Goods, until he be legally convicted (on the beſt Defence he can make for himſelf) that they ought by Law to be taken from him. But in this Caſe, the legal Right of one man unto his Goods, is transferred unto another, and that other inabled by force to take Poſſeſſion of them, before the true Owner is once asked why it ſhould not be ſo. The pretence of allowing him a liberty in ſome Caſes, to make uſe of an Appeal, and to ſue for his own Goods, when they are in the ſuppoſed legal Poſſeſſion of another, and he diſinabled for ſuch a Suit by the loſs of them (as many have been) is no help in this Caſe, nor gives the leaſt colour of Juſtice to this Procedure.

To interpret the words in the Act, to give countenance unto this way of Procedure, is contrary to the known Rules of interpreting Laws of this nature: and theſe are firſt, That they are not to be made Snares to catch and harm men, without juſt cauſe, and a neceſſity thereon for publick Good. To make ſuch Engines of them, is to diveſt them of all Authority; nor can that Reverence that is due unto Government be preſerved, unleſs it be manifeſt, that not only the Laws, but alſo the Adminiſtration of them, are for publick Good; ſo as that they are not capable, in their genuine Senſe, to be made Snares for the hurt of men, in denying them their *own juſt Defence*. Nor can there be a more dangerous inroad made on the Security of the Subjects, as to their Property and Liberty, in and by the Adminiſtration of the Law, than a wreſting of it in any one Inſtance unto the hurt or wrong of any: and we do know, what conſequence the Interpretation and undue Application of penal Statutes, with the wreſting them unto unwarrantable Severities, have had here in *England*. And it is a Rule of the ſame importance, That in dubious Caſes, ſuch Laws are to be interpreted according to the Cuſtom and Uſage of proceedings in other Laws

of

of a like nature, and not be conſtrued unto the intereſt of Severity, eſpecially where 'tis uſed unto the Gain and Profit of other men: And what is the method of Conviction in all other Laws, towards perſons who do not decline a Trial, is known.

8. But beſides all that hath been ſpoken as unto the reaſon of things in general; this Practiſe is directly contrary to, and inconſiſtent with the plain Sence and Intention of the Law it ſelf, whereof Execution is pretended; For there is a gradation in the penalty annexed unto a contrivance in the offence. The firſt Conviction is for Twenty pounds, the Second for Forty. And this will admit of no pretence, but that the perſon offending, muſt know of the firſt Conviction, that it may be a warning to him, to avoid the additional penalty, which is for continuance in the ſame ſuppoſed offence after the firſt admonition. But in the preſent practiſe, no ſuch thing is allow'd, but Convictions are made for the firſt, ſecond, and third Offence, without any tryal of what effect the firſt would be, which is contrary to the Senſe of the Law, and an open reſting of it unto the ruin of men. And

Laſtly; Theſe Convictions are made on the Oaths of the Informers, who at preſent are a ſort of men, ſo deſtitute of all reputation on the account of their indigency contracted by their profligate converſation, as that men of the like qualifications are prohibited by many Laws, from bearing Teſtimony in any caſe, tho in all other things the Proceſs be legal, open and plain. To admit ſuch perſons to give Oaths in private, without calling or ſummoning them to anſwer, who are charg'd by them, and thereon to put them into an actual poſſeſſion of their Goods, unto their own uſe and advantage, is a practiſe which *England* hath had as yet no precident for, nor found out an eſpecial name whereby to call it. Hereon Perjuries have been multiplied amongſt this ſort of perſons (whereof ſundry of them have been legally convicted) to the diſhonour of God, and great Increaſe of the ſin of the Land; and whatever becomes of Nonconformiſts, if the ſame kind of procedure ſhould be applied unto other caſes, (as why it may not be ſo, if in this inſtance, the bounds of the Law of nature, and the uſages of mankind ſhould be broken down) others would find themſelves aggrieved as well as they.

And theſe things are humbly ſubmitted unto the Conſideration of the Judges, Juſtices, and Juries, even all that are concerned in the Adminiſtration or Execution of the Law.

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